

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 9  
Committee Substitute Favorable 3/7/01  
Third Edition Engrossed 3/14/01**

Short Title: Modify Avery County Occy. Taxes.

(Local)

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Sponsors:

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Referred to:

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January 29, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR UNIFORM MUNICIPAL OCCUPANCY TAXES IN  
AVERY COUNTY.

The General Assembly of North Carolina enacts:

**REPEAL AVERY COUNTY OCCUPANCY TAX**

**SECTION 1.** Chapter 472 of the 1993 Session Laws, as amended by  
Sections 4 and 5 of S.L. 1997-410, is repealed.

**UNIFORM ADMINISTRATIVE PROVISIONS**

**SECTION 2.** G.S. 160A-215 reads as rewritten:

**"§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly  
has authorized to levy room occupancy taxes. For the purpose of this section, the term  
"city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not  
less than 10 days' public notice and after a public hearing held pursuant thereto. A room  
occupancy tax shall become effective on the date specified in the resolution levying the  
tax. That date must be the first day of a calendar month, however, and may not be  
earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax  
shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall  
be collected as part of the charge for furnishing a taxable accommodation. The tax shall  
be stated and charged separately from the sales records and shall be paid by the  
purchaser to the operator of the business as trustee for and on account of the taxing city.  
The tax shall be added to the sales price and shall be passed on to the purchaser instead  
of being borne by the operator of the business. The taxing city shall design, print, and  
furnish to all appropriate businesses and persons in the city the necessary forms for  
filing returns and instructions to ensure the full collection of the tax. An operator of a  
business who collects a room occupancy tax may deduct from the amount remitted to

1 the taxing city a discount equal to the discount the State allows the operator for State  
2 sales and use tax.

3 (d) Administration. – The taxing city shall administer a room occupancy tax it  
4 levies. A room occupancy tax is due and payable to the city finance officer in monthly  
5 installments on or before the fifteenth day of the month following the month in which  
6 the tax accrues. Every person, firm, corporation, or association liable for the tax shall,  
7 on or before the fifteenth day of each month, prepare and render a return on a form  
8 prescribed by the taxing city. The return shall state the total gross receipts derived in the  
9 preceding month from rentals upon which the tax is levied. A room occupancy tax  
10 return filed with the city finance officer is not a public record and may not be disclosed  
11 except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

12 (e) Penalties. – A person, firm, corporation, or association who fails or refuses to  
13 file a room occupancy tax return or pay a room occupancy tax as required by law is  
14 subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a  
15 return for State sales and use taxes. The governing board of the taxing city has the same  
16 authority to waive the penalties for a room occupancy tax that the Secretary of Revenue  
17 has to waive the penalties for State sales and use taxes.

18 (f) Repeal or Reduction. – A room occupancy tax levied by a city may be  
19 repealed or reduced by a resolution adopted by the governing body of the city. Repeal or  
20 reduction of a room occupancy tax shall become effective on the first day of a month  
21 and may not become effective until the end of the fiscal year in which the resolution  
22 was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for  
23 a tax that was attached before the effective date of the repeal or reduction, nor does it  
24 affect a right to a refund of a tax that accrued before the effective date of the repeal or  
25 reduction.

26 (g) This section applies only to the Cities of Goldsboro, Greensboro, Lumberton,  
27 Mount Airy, Shelby, and Statesville, to the Towns of ~~Banner Elk, Mooresville,~~  
28 Mooresville and St. Pauls, and to the municipalities in Avery and Brunswick  
29 CountyCounties."

### 30 BEECH MOUNTAIN ADMINISTRATIVE PROVISIONS

31 **SECTION 3.** Chapter 376 of the 1987 Session Laws reads as rewritten:

32 "AN ACT TO AUTHORIZE THE TOWN OF BEECH MOUNTAIN TO LEVY A  
33 ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

34 Section 1. Occupancy Tax. The Town Council of Beech Mountain may ~~by~~  
35 ~~resolution, after not less than 10 days' public notice and after a public hearing held~~  
36 ~~pursuant thereto,~~ levy a room occupancy and tourism development tax. ~~Collection of the~~  
37 ~~tax, and liability therefor shall begin and continue only on and after the first day of a~~  
38 ~~calendar month set by the Town Council of Beech Mountain in the resolution levying~~  
39 ~~the tax, which in no case may be earlier than the first day of the second succeeding~~  
40 ~~calendar month after the date of adoption of the resolution.~~

41 The occupancy and tourism development tax that may be levied under this act shall  
42 be three percent (3%) of the gross receipts derived from the rental of any room, lodging,  
43 or similar accommodation in the Town of Beech Mountain that is subject to sales tax

1 imposed by the State under G.S. ~~105-164.4(3)~~.105-164.4(a)(3). This tax is in addition to  
2 any State or local sales tax. The tax ~~shall does~~ not apply to any room, lodging, or  
3 accommodations supplied to the same person for a period of 90 continuous days or  
4 more. The tax shall also not apply to sleeping rooms or lodgings furnished by charitable,  
5 educational, or religious institutions or ~~non-profit~~ nonprofit organizations.

6 Sec. 2. Administration of Tax. (a) A tax levied under this section shall be levied,  
7 administered, collected, and repealed as provided in G.S. 160A-215. The penalties  
8 provided in G.S. 160A-215 apply to a tax levied under this section. ~~The Town of Beech~~  
9 ~~Mountain shall administer a tax levied under this act. A tax levied under this act is due~~  
10 ~~and payable to the Town in monthly installments on or before the 15th day of the month~~  
11 ~~following the month in which the tax accrues. Every person, firm, corporation, and~~  
12 ~~association liable for the tax shall, on or before the 15<sup>th</sup> day of each month, prepare and~~  
13 ~~render a return on a form prescribed by the Town. The return shall state the total gross~~  
14 ~~receipts derived in the preceding month from rentals upon which the tax is levied. A~~  
15 ~~return filed with the Town under this act is not a public record as defined by G.S. 132-1~~  
16 ~~and may not be disclosed except as required by law.~~

17 (b) ~~Any person, firm, corporation, or association who fails or refuses to file the~~  
18 ~~return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's~~  
19 ~~omission.~~

20 ~~In case of failure or refusal to file the return or pay the tax for a period of 30 days or~~  
21 ~~more after the time required for filing the return or for paying the tax, there shall be an~~  
22 ~~additional tax, as a penalty, of five percent (5%) of the total tax due, for each additional~~  
23 ~~month or fraction thereof until the occupancy tax is paid.~~

24 ~~Any person who willfully attempts in any manner to evade the occupancy tax levied~~  
25 ~~under this act or to make a return and who willfully fails to pay the tax or make and file~~  
26 ~~a return shall, in addition to all other penalties provided by law, be guilty of a~~  
27 ~~misdemeanor and shall be punished by a fine not to exceed one thousand dollars~~  
28 ~~(\$1,000) or by imprisonment not to exceed six months, or both. The Town Council may,~~  
29 ~~for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

30 (c) All persons, firms, corporations, and associations who rent either their own  
31 dwelling or dwellings or rooms for other persons are required to submit to the ~~Town~~  
32 town a list of all rental properties. This list shall include the owner's name, current  
33 address, and location of rental property. The list shall be submitted semi-annually on or  
34 before November 30 and May 30.

35 Failure to file ~~said~~ this listing shall subject the person, firm, corporation or  
36 association to a civil penalty.

37 Sec. 3. Collection of Tax. (a) ~~Every operator of a business and every individual~~  
38 ~~renting his or her own property subject to the tax levied pursuant to this act shall, on and~~  
39 ~~after the effective date of the levy of the tax, collect the three percent (3%) room~~  
40 ~~occupancy tax.~~

41 ~~This tax shall be collected as part of the charge for the furnishing of any taxable~~  
42 ~~accommodations. The tax shall be stated and charged separately from the sales records,~~  
43 ~~and shall be paid by the purchaser to the operator of the business as trustee for and on~~

1 account of the Town of Beech Mountain. It is the intent of this act that the room  
2 occupancy tax levied by the Town of Beech Mountain shall be added to the sales price  
3 and that the tax shall be passed on to the purchaser instead of being borne by the  
4 operator of the business. The Town shall design, print, and furnish to all appropriate  
5 businesses in the Town, the necessary forms for filing returns and instructions to ensure  
6 the full collection of the tax.

7 (b) Collection of the tax shall be the responsibility of the Beech Mountain Tax  
8 Administrator. In his/her discretion, the Tax Administrator may proceed against an  
9 operator whose occupancy tax is delinquent, employing all remedies for collection of  
10 tax as set out in G.S. 105-367, 105-368, 105-374, and 105-375. The Tax Administrator  
11 may audit occupancy tax reports as he/she deems necessary, utilizing information  
12 available to him/her in property tax matters.

13 ~~Sec. 4. Discount for Payment of Taxes When Due. Every operator who pays the~~  
14 ~~occupancy tax imposed by this Article shall be entitled to deduct from the amount of the~~  
15 ~~tax for which he is liable and which he actually pays a discount of three percent (3%).~~  
16 ~~Provided, however, the Tax Administrator may deny a taxpayer the benefits of this~~  
17 ~~section for failure to pay the full tax when due as well as in cases of fraud, evasion, or~~  
18 ~~failure to keep accurate and clear records as herein required. Provided, further, that in~~  
19 ~~order to receive the discount the taxpayer must deduct the three percent (3%) at the time~~  
20 ~~of making his monthly remittance of tax to the Town.~~

21 ~~Sec. 5. Disposition of Taxes Collected. Distribution and Use of Tax Revenue. The~~  
22 ~~Town of Beech Mountain shall retain from the gross proceeds of the tax collected an~~  
23 ~~amount sufficient to pay its direct costs for administrative and collection expenses. "Net~~  
24 ~~proceeds" shall mean gross proceeds less the direct costs for administrative and~~  
25 ~~collection expenses not to exceed three percent (3%) of the amount collected. The net~~  
26 ~~proceeds shall be distributed to the Town Council. The Town Council may expend the~~  
27 ~~funds distributed to it pursuant to this section only to further the development of travel,~~  
28 ~~tourism, conventions, and convention facilities in the Town. shall, on a quarterly basis,~~  
29 ~~remit the net proceeds of the occupancy tax to the Beech Mountain Tourism~~  
30 ~~Development Authority. The Authority shall use at least two-thirds of the funds~~  
31 ~~remitted to it under this subsection to promote travel and tourism in Beech Mountain~~  
32 ~~and shall use the remainder for tourism-related expenditures.~~

33 The following definitions apply in this subsection:

- 34 (1) Net proceeds. – Gross proceeds less the cost to the city of  
35 administering and collecting the tax, as determined by the finance  
36 officer, not to exceed three percent (3%) of the first five hundred  
37 thousand dollars (\$500,000) of gross proceeds collected each year and  
38 one percent (1%) of the remaining gross receipts collected each year.  
39 (2) Promote travel and tourism. – To advertise or market an area or  
40 activity, publish and distribute pamphlets and other materials, conduct  
41 market research, or engage in similar promotional activities that attract  
42 tourists or business travelers to the area; the term includes  
43 administrative expenses incurred in engaging in the listed activities.

1           (3) Tourism-related expenditures. – Expenditures that, in the judgment of  
2           the Tourism Development Authority, are designed to increase the use  
3           of lodging facilities, meeting facilities, or convention facilities in a city  
4           or to attract tourists or business travelers to the city. The term includes  
5           tourism-related capital expenditures.

6           Sec. 5.1. Beech Mountain Tourism Development Authority. (a) Appointment and  
7           Membership. When the Beech Mountain City Council adopts a resolution levying a  
8           room occupancy tax under this act, it shall also adopt a resolution creating a city  
9           Tourism Development Authority, which shall be a public authority under the Local  
10           Government Budget and Fiscal Control Act. The resolution shall provide for the  
11           membership of the Authority, including the members' terms of office, and for the filling  
12           of vacancies on the Authority. At least one-third of the members must be individuals  
13           who are affiliated with businesses that collect the tax in the city and at least  
14           three-fourths of the members must be individuals who are currently active in the  
15           promotion of travel and tourism in the city. The city council shall designate one  
16           member of the Authority as chair and shall determine the compensation, if any, to be  
17           paid to members of the Authority.

18           The Authority shall meet at the call of the chair and shall adopt rules of procedure to  
19           govern its meetings. The Finance Officer for Beech Mountain shall be the ex officio  
20           finance officer of the Authority.

21           Sec 5.2. Duties. The Authority shall expend the net proceeds of the tax levied under  
22           this act for the purposes provided in Section 3 of this act. The Authority shall promote  
23           travel, tourism, and conventions in the city, sponsor tourist-related events and activities  
24           in the city, and finance tourist-related capital projects in the city.

25           Sec 5.3. Reports. The Authority shall report quarterly and at the close of the fiscal  
26           year to the Beech Mountain City Council on its receipts and expenditures for the  
27           preceding quarter and for the year in such detail as the City Council may require.

28           ~~Sec. 6. Repeal of Levy. The Beech Mountain Town Council may by resolution~~  
29           ~~repeal the levy of the room occupancy tax in Beech Mountain, but no repeal of taxes~~  
30           ~~levied under this part shall be effective until the end of the fiscal year in which the~~  
31           ~~repeal resolution was adopted. No liability for any tax levied under this part that~~  
32           ~~attached prior to the date on which a levy is repealed shall be discharged as a result of~~  
33           ~~the repeal, and no right to a refund of a tax that accrued prior to the effective date on~~  
34           ~~which a levy is repealed shall be denied as a result of the repeal.~~

35           Sec. 7. This act is effective upon ratification."

#### 36                                   **AUTHORIZE OTHER AVERY TOWNS TO LEVY**

37           **SECTION 4.(a)** Authorization and Scope. – This section applies only to  
38 cities in Avery County that are not otherwise authorized to levy a room occupancy tax.  
39 The governing body of a city may levy a room occupancy tax of up to three percent  
40 (3%) of the gross receipts derived from the rental of any room, lodging, or  
41 accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within  
42 the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).  
43 This tax is in addition to any State or local sales tax. This tax does not apply to

1 accommodations furnished by nonprofit charitable, educational, or religious  
2 organizations when furnished in furtherance of their nonprofit purpose.

3 **SECTION 4.(b)** Administration. – A tax levied under this section must be  
4 levied, administered, collected, and repealed as provided in G.S. 160A-215. The  
5 penalties provided in G.S. 160A-215 apply to a tax levied under this section.

6 **SECTION 4.(c)** Distribution and Use of Tax Revenue. – The taxing city  
7 shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the taxing  
8 city's Tourism Development Authority. The Authority shall use at least two-thirds of  
9 the funds remitted to it under this subsection to promote travel and tourism in the taxing  
10 city and shall use the remainder for tourism-related expenditures.

11 **SECTION 4.(d)** Definitions. – The following definitions apply in this  
12 section:

13 (1) City. – Defined in G.S. 153A-1.

14 (2) Net proceeds. – Gross proceeds less the cost to the city of  
15 administering and collecting the tax, as determined by the finance  
16 officer, not to exceed three percent (3%) of the first five hundred  
17 thousand dollars (\$500,000) of gross proceeds collected each year and  
18 one percent (1%) of the remaining gross receipts collected each year.

19 (3) Promote travel and tourism. – To advertise or market an area or  
20 activity, publish and distribute pamphlets and other materials, conduct  
21 market research, or engage in similar promotional activities that attract  
22 tourists or business travelers to the area; the term includes  
23 administrative expenses incurred in engaging in the listed activities.

24 (4) Tourism-related expenditures. – Expenditures that, in the judgment of  
25 the Tourism Development Authority, are designed to increase the use  
26 of lodging facilities, meeting facilities, or convention facilities in a city  
27 or to attract tourists or business travelers to the city. The term includes  
28 tourism-related capital expenditures.

29 **SECTION 5.(a)** Tourism Development Authority. (a) Appointment and  
30 Membership. When the city council of a taxing city adopts a resolution levying a room  
31 occupancy tax under this act, it shall also adopt a resolution creating a Tourism  
32 Development Authority, which shall be a public authority under the Local Government  
33 Budget and Fiscal Control Act. The resolution shall provide for the membership of the  
34 Authority, including the members' terms of office, and for the filling of vacancies on the  
35 Authority. At least one-third of the members must be individuals who are affiliated  
36 with businesses that collect the tax in the city and at least three-fourths of the members  
37 must be individuals who are currently active in the promotion of travel and tourism in  
38 the city. The city council shall designate one member of the Authority as chair and  
39 shall determine the compensation, if any, to be paid to the members of the Authority.

40 The Authority shall meet at the call of the chair and shall adopt rules of  
41 procedure to govern its meetings. The Finance Officer for the taxing city shall be the ex  
42 officio finance officer of the Authority.

